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No. 81-2319

IN THE

Supreme Court of the United States

October Term, 1981

JAMES L. PICKERING,
Petitioner Pro Se,

v.

ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES and DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF THE STATE OF NEW YORK,
Respondents.

ON PETITION FOR ORIGINAL WRIT OF MANDAMUS TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

RESPONDENT'S BRIEF IN OPPOSITION

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Question Presented.

Whether the United States Supreme Court has original jurisdiction to issue a writ of mandamus against State and Federal administrative officers in circumstances that are not in aid of the Court's appellate jurisdiction.

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RESPONDENT'S BRIEF IN OPPOSITION.

The respondent Department of Environmental Conservation of the State of New York respectfully requests that this Court deny the petition for writ of mandamus seeking orders against administrative officers of the State of New York.

Constitutional and Statutory Provisions Involved.

1. United States Constitution Article III Section 2, Clause 2. *Supreme Court, Original and Appellate Jurisdiction:*

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

2. 28 U.S.C. §1361:

> *Action to compel an officer of the United States to perform his duty*
>
> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereto to perform a duty owed to the plaintiff.

Statement of the Case.

This controversy arose from an administrative decision of the New York Department of Environmental Conservation. The decision granted a permit to a private company to operate a landfill near the petitioner's home in Chaffee, New York. The petitioner alleges that his rights were violated because the respondent did not hold a public hearing prior to the issuance of the permit.

Petitioner seeks an original writ of mandamus against non-judicial officers of the federal and New York State government. There has been no prior decision of any federal or state court regarding the petitioner's claim. The petitioner has not filed for a writ of mandamus in the U.S. District Court pursuant to 28 U.S.C. 1361. The petitioner has not filed a citizen suit in the U.S. District Court pursuant to 42 U.S.C.A. §6972. The petitioner has not instituted a proceeding to review the administrative determination of the New York respondent decision in state court pursuant to New York Civil Practice Law and Rules, Article 78 (McKinney).

REASON WHY THE WRIT SHOULD BE DENIED.

The Court does not have original jurisdiction to issue a writ of mandamus except in aid of its appellate jurisdiction.

It is well established that the U.S. Supreme Court does not have original jurisdiction to issue a writ of mandamus except in aid of its appellate jurisdiction. *Ex parte Republic of Peru,* 318 U.S. 578, 87 L. Ed. 1014, 63 S. Ct. 793 (1943); *Ex parte Yerger,* 8 Wall 85, 19 L. Ed. 332, 336 (1869); *Kendall v. U.S.,* 12 Pet. 524, 9 L. Ed. 1181 (1838). The issuance of a writ of mandamus to a non-judicial officer is not in aid of appellate jurisdiction and is prohibited as an exercise of original jurisdiction. *Marbury v. Madison,* 1 Cranch 137, 2 L. Ed. 60 (1803).

Conclusion.

For this reason, the petition for a writ of mandamus should be denied.

Respectfully submitted,

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